

REMARKS

This Amendment is responsive to the Office Action mailed September 12, 2007. After entry of this Amendment, claims 1-18 are currently pending in this application and subject to examination. Claims 1, 5, and 17 are amended. Support for the amendment to claim 1 is found at page 2, line 3 of the present specification. No new matter is added

Reconsideration of the application as amended is respectfully requested in view of the following remarks.

Objection to Claim 5

The Examiner objected to claim 5 on the ground that it does not recite a formula "VI," as is recited in dependent claim 16. Applicants thank the Examiner for both pointing out and overlooking this typographical error. Applicants note that this missing Roman numeral is located at the bottom left-hand corner of page 4 of the Preliminary Amendment filed March 14, 2005, after the formula to which it refers. As such, Applicants have amended claim 5 to properly recite "VI" before the formulae depicted therein.

Applicants believe this amendment obviates the Examiner's objection and respectfully requests its withdrawal.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claim 17 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite for reciting the term "where appropriate." Applicants respectfully traverse. However, in the interest of expediting prosecution, Applicants have amended claim 17 to delete this term and replace it with the term "optionally."

Applicants believe this amendment obviates the Examiner's rejection and respectfully requests its withdrawal.

Rejection Under 35 U.S.C. § 102(e)

Claims 1-3, 5-9, 13, 14, 16, and 17 stand rejected under 35 U.S.C. § 102(e) as anticipated by either U.S. Patent No. 6,365,686 to Jacobs et al. (hereinafter, "D1") or U.S. Patent No. 6,316,560 to Jacobs et al. (hereinafter, "D2"). Applicants respectfully traverse.

Claim 1 of the present application, as amended above, recites:

"[a] process for producing a packaging composed of a thermoformable film composed of thermoplastic polyolefins, *via thermoforming*, where, after thermoforming, the film has an improved heat distortion temperature and a high water-vapor barrier, which comprises using, in the thermoformable film, an amount in the range *of from 20 to 90 %* by weight, based on the total weight of polyolefins, of COC with a glass transition temperature T_g in the range from 65 to 200°C, measured to DIN EN ISO 11357-1 with the aid of a DSC at a heating rate of 10 K/min, and which comprises producing therefrom, *via thermoforming* at a temperature in the range from 70 to 170°C a packaging whose heat distortion temperature is in the range from 60 to 200°C."

(emphasis added)

Neither D1 nor D2 specifically disclose films comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, as claimed. Furthermore, since neither D1 nor D2 disclose COC/thermoplastic polyolefin blends in the claimed proportions, it cannot be assumed that films prepared from the polymers of D1 and D2 would inherently possess the claimed heat distortion temperature range of from 60 to 200 °C.¹ In addition, the Examiner asserts that both D1 and D2 teach "the manufacture of films of 'any shape and size' by thermoforming." See page 4, lines 7-8 and page 5, lines 11-12 of the September 12, 2007 Office Action. However, the only methods of

¹ In his obviousness rejections at page 6, lines 10-13 and page 8, lines 9-12 of the September 12, 2007 Office Action, the Examiner appears to acknowledge that neither D1 nor D2 explicitly or inherently disclose this feature. There, the Examiner states that D1 and D2 do "not provide any teaching of ranges for the heat distortion temperatures as recited in claims 10, 12 and 18" and relies on additional references for this teaching.

manufacture mentioned in the sections of D1 and D2 cited by the Examiner (column 25, lines 43-50 and column 13, lines 37-45) are extrusion and injection molding. *See* page 3, lines 12-15 and page 4, lines 15-18 of the September 12, 2007 Office Action. Furthermore, no other part of the respective disclosures of D1 or D2 teaches a process for producing a packaging, or any other article, via *thermoforming*.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See* MPEP § 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Both D1 and D2 fail to disclose films (1) comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, (2) having a heat distortion temperature range of from 60 to 200 °C, and (3) produced via thermoforming. As such, neither D1 nor D2 anticipate claims 1-3, 5-9, 13, 14, 16, and 17 since they do not expressly or inherently describe each and every element set forth in these claims. Applicants respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. § 103(a)

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as obvious over either D1 or D2 in view of either U.S. Patent No. 5,783,273 to Yamamoto et al. (hereinafter, "D3") or U.S. Patent No. 5,532,030 to Hirose et al. (hereinafter, "D4"). Applicants respectfully traverse.

Applicants incorporate by reference herein in their entirety the above remarks pertaining to D1 and D2.

Like D1 and D2, neither D3 nor D4 specifically disclose films comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, as claimed.

Regarding the claimed heat distortion temperature range, the Examiner appears to assert that this feature is inherent in the packagings of D3 and D4, inasmuch as the glass transition temperature ranges disclosed in these references are "indicative of a high heat distortion resistance." To establish that a missing claim limitation is inherent, rationale or evidence making "clear that the missing descriptive matter is *necessarily present* in the thing described in the reference" must be provided. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Inherency

may not be established by probabilities or possibilities and the mere fact that a certain thing *may result* from a given set of circumstances is not sufficient. *Id.* The Examiner has failed to establish that the packagings of D3 and D4 inherently possess a heat distortion temperature in the range from 60 to 200°C since it has not been shown that the glass transition temperature ranges disclosed in these references *necessarily* result in packagings possessing the presently claimed heat distortion temperature range.

As with establishing anticipation, to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *See* MPEP § 2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). Both D1 and D2 in combination with D3 or D4 fail to disclose films (1) comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, (2) having a heat distortion temperature range of from 60 to 200 °C. As such, neither D1 nor D2 in combination with D3 or D4 render claims 1-3, 5-9, 13, 14, 16, and 17 obvious since they do not teach or suggest all of the limitations of these claims. Applicants respectfully request withdrawal of this rejection.

In view of the foregoing amendment and remarks, Applicants believe the pending application is in condition for allowance.

The Director is authorized to charge \$460.00 to Deposit Account No. 03-2775, under Order No. 09600-00022-US, to cover the fee under 37 C.F.R. § 1.17(a)(2) for a two-month extension of time. Should any other fees be required in connection with this Amendment, authorization is hereby made to charge any fees due or outstanding, including any extension fees, or credit any overpayment, to Deposit Account No. 03-2775.

Dated: February 12, 2008

Respectfully submitted,

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